

REMARKS

With the entry of this Response, Claims 1-10 and 12 are pending, Claims 11 and 13 have been canceled, and Claims 1, 3-5, 6, 8-10 and 12 have been amended.

CLAIM INTERPRETATION-CLAIM 10

The Examiner interpreted Claim 10, as originally filed, to be a method claim. Applicants have amended Claim 10 to more clearly recite a method claim.

RESTRICTION ELECTION

In the Office Action, mailed July 27, 2010, the Examiner required restriction of the claims to one of four groups, as described in the Office Action: Group I – an avian cell line (Claims 1-7); Group II – a method for preparing an avian cell line (Claims 8-9); Group III – a method for producing viruses (Claims 10-12); and Group IV – a method for producing recombinant proteins (Claims 10 and 13). Applicants respectfully submit that the Examiner has erred in restricting the currently pending claims in this manner.

The Office Action stated that the

“inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical reasons: the technical feature linking Groups I-IV appears to be that they all relate to immortalized avian cell lines transformed with at least two viral or cellular genes, one of which causes cell cycle progression whereas the other interferes with innate protective mechanisms of the cell induced by deregulated replication, and methods suitable for production of biologicals or viruses for vaccination. However, prior art exemplified by Kim, et al., HANTS, GB, vol. 20, no. 21, 2001, pages 2671-2682, ...of record) described the creation of immortalized chicken embryo fibroblast cell lines, which have been established in continuous cell culture wherein the expression pattern of p53 and 2F-1 has been tested...Therefore, the technical feature linking the invention of groups I-IV does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over prior art for the reasons set forth above.” See page 4, Office Action.

The art cited by the Examiner, Kim et al., has been misinterpreted. The Kim et al. reference does not

teach Applicants currently pending invention, but instead discloses the results of testing the expression of p53 and E2F-1 levels of immortalized cells compared to primary cultured cells. See Kim et al. at the title, p. 2672, lines 2-4, and p. 2680, under Material and methods, Cells and culture conditions. There is no teaching or suggestion in Kim et al. of making an immortalized cell line or a cell line made immortal by particular steps, only the measurement of levels of p53 and E2F-1 in existing immortalized cells. Applicants currently pending claims recite an avian cell line made by insertion of particular genes, which may have effects on p53 and E2F-1, and methods for making and using such a cell line. This understanding of the art and the present invention is also held by the European Patent Office. According to the International Preliminary Report on Patentability, issued by the European Patent Office acting as the International Preliminary Examining Authority, no lack of unity of invention was found for the claims. The EPO characterized the invention of the above-referenced patent application as differing from Kim et al. in that the immortalized cell line of the present invention is transformed with genes that provide an alteration in the P53 and pRb pathways, in contrast to the Kim et al. reference which merely studies the p53 and E2F-1 levels of immortalized cells.

Thus, the claims of the present invention have special technical features that define a contribution over the prior art, the claims do have unity of invention, and restriction of the claims into four groups is incorrect.

Under 37 C.F.R. 1.475(b), once the “special technical features” are shown to not be taught by the prior art, a national stage application will be considered to have unity of invention if the claims are drawn to specific combinations of categories. One of those combinations is 37 C.F.R. 1.475(b), “(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product”. As applied to the current claims, this would include currently pending Claims 1-10 and 12.

Applicants respectfully request that the Examiner withdraw the restriction of the claims for lack of unity in view of Kim et al. and examine currently pending Claims 1-10 and 12.

FURTHER RESTRICTIONS

Page 5, 1st Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants would restrict the combination of an E1A (first gene) and an E1B (second gene) to the following:

E1A gene according to the sequence complementary to bp 4230 to 3113 of SEQ ID NO: 9
and E1B gene according to the sequence complementary to bp 2345 to 550 of SEQ ID NO:9.

Page 5, 2nd Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants submit that this restriction resulted from unclear claim language. Claim 4 has been amended to rectify the unclear language as to the identity of the orf22 gene and the GAM-1 gene. There is no need for restriction of these sequences.

SPECIES ELECTION

In the Office Action, the Examiner required restriction of the claims to one of four groups: Applicants submit that there is no lack of unity of the claims and that restriction is not proper. Applicants are not electing a restricted group of claims, but Applicants will identify species for search purposes by the Examiner. Once the initial elected species is allowable, further examination of the other species is expected.

1. Species election 1, page 6 Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants elect in Claim 1 the species - viral gene.
2. Species election 2, page 7 Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants elect in Claim 1 the species - a first viral gene that is an adenovirus E1A gene from mastadenoviruses; and a second viral gene from a gene coding for an adenovirus E1B 55K protein of all groups.
3. Species election 3, page 8 Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants elect in Claim 3, the species - a cell line derived from duck.
4. Species election 4, page 8 Though Applicants are not electing Group 1, in an effort to facilitate prosecution, Applicants elect in Claim 3, the species - separated individual organs, namely retina tissues.

As the Examiner has found at least Claims 1 and 10 to be generic, the identified claims are Claims 1-10 and 12.

CONCLUSION

The foregoing is a complete response to the Action dated July 27, 2010. Applicants respectfully submit that at least Claims 1-10 and 12 are patentable. Early and favorable consideration is solicited.

Applicants file this response solely to facilitate prosecution. As such, Applicants reserve the right to pursue claims of broader or similar scope as originally filed in a continuation application or other application after allowance of the present application. Applicants do not concede that the current or past rejections are correct and reserve the right to challenge such rejections later in prosecution or on appeal. Accordingly, any amendment, argument, or claim cancellation is not to be construed as abandonment or disclaimer of subject matter. Because certain of the current amendments may include broadening amendments, Applicants respectfully request the Examiner to revisit any previously reviewed references cited in this Application to further ensure that the currently pending claims remain patentable over any previously reviewed references.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 14-0629. Applicants are submitting a petition and fee for a five months extension of time.

If the Examiner believes there are other issues that can be resolved by a telephone interview, or that there are any informalities that remain in the application which may be corrected by the Examiner's amendment, a telephone call to the undersigned attorney at (678) 420-9428 is respectfully solicited.

Respectfully submitted,

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